

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 March 2025

DOCKET NUMBER: AR20240009509

APPLICANT REQUESTS, in effect:

- for his narrative reason for separation to show he was discharged due to a disability
- a video/telephone appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149, Application for Correction of Military Record
- Applicant's statement
- Power of Attorney's (POA) statement
- Special Orders Number 122, Fort Knox, Kentucky
- DD Form 214, Armed Forces of the United States-Report of Transfer or Discharge

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect –

a. Upon entering the military, he was examined by a military physician and was told that he was good to enlist. He contends that he was injured after entering the military when he fell in a foxhole. The injury was not his fault. He joined the Army to serve his country, and he has tried for 50 years to have this error corrected.

b. The POA indicates, in effect, that the applicant's separation orders show that the reason for discharge is listed as "MEDICAL." Therefore, the applicant's DD Form 214 should reflect the same in Item 11c, Reason and Authority.

3. The applicant enlisted in the U.S. Army Reserve on 21 December 1971. He subsequently entered active duty on 7 April 1972. The applicant arrived at his Basic Combat Training location on or about 24 April 1972.

4. A DD Form 220, Active Duty Report, shows that the applicant underwent a medical examination on or about September 1971 and reported having been treated for a bad foot during the period from January 1972 to the April 1972. He further indicated on 13 April 1972 that he did not believe that he was medically qualified to perform satisfactory military service.

5. On 2 June 1972, the applicant's commander informed him –

a. A medical examination completed on 15 May 1972 revealed a permanently disqualifying medical condition that would have prevented him from entering military service.

b. He had the option to complete the period of service for which he was originally enlisted; or apply for separation from the military service by reason of having been erroneously enlisted or inducted. The applicant elected to apply for separation.

6. Special Orders Number Extract 122, 9 June 1972, published by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, Kentucky directed the applicant be discharged on 14 June 1972 with an honorable characterization of service. The reason for discharge is listed as "Medical."

7. On 14 June 1972, the applicant was discharged in accordance with his separation orders. The DD Form 214 shows in Item 11c, he was discharged because of not meeting medical fitness standards at the time of entry, in accordance with Army Regulation 635-200, Personnel Separations-Enlisted Personnel, SPN Code 375. He completed 2 months and 8 days of net service for the period and was in a trainee status at the time of discharge.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES) and a medical retirement.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 7 April 1972 and was honorably discharged on 14 June 1972 under the authority provided in AR 635-200, Personnel Separations – Enlisted Personnel (1 June 1967): Discharge of personnel who did not meet procurement medical fitness standards. The separation program number 375 denotes "Discharge because of not meeting medical fitness standards at time of enlistment."

d. No medical documents were submitted with the application. Because of the period of service under consideration, there are no encounters in AHLTA or documents in iPERMS.

e. Paragraph 5-9 of 635-200 authorized a Soldier to be discharged "when a medical board, regardless of the date completed, establishes that a medical condition was identified by appropriate military medical authority within 4 months of the member's initial entrance on active duty...". The board needs to show the condition:

"(1) Would have permanently disqualified him for entry into the military service had it been detected at that time; and

(2) Does not disqualify him for retention in the military service under the provisions of chapter 3, AR 40-501."

f. On a DD form 220 signed by the applicant on 13 April 1972, the applicant stated:

"I have been treated by Dr. F. during the period from Jan 1972 to now for bad feet."

"I do not believe that I am now medically qualified to perform satisfactory military service."

g. From a 2 June 1972 Disposition Form:

"I have been advised that a medical examination on 15 May 72 revealed that I have a medical condition which would have permanently disqualified me for entry in the military service had it been detected at the time, and it does not disqualify me from retention in the military service under provisions of Chapter 2 {sic, should be 3}, AR 40-501 [Standards of Medical Fitness] ...

I certify that I have been counseled as to my rights and that I fully understand my right to submit an application for separation by reason of erroneous enlistment or induction and I: hereby make application for such separation.”

h. JLV shows he was awarded a 10% VA service-connected disability rating for residuals of foot injury in January 2023. However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

i. It is the opinion of the ARBA Medical Advisor that a referral of his case to the Disability Evaluation System is not warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

//SIGNED//

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation (AR) 635-5, Personnel Separations-Separation Documents, in effect at the time, prescribed the separation documents that would be provided to each individual who separated from the Army, including Active Duty for Training personnel. Appendix X lists Separation Program Numbers (SPN) and the authority governing separations. It states that SPN 375 is the appropriate code for enlisted Soldiers discharged because of not meeting medical fitness standards at time of enlistment.
3. AR 635-200, Personnel Separations-Enlisted Personnel, in effect at the time, set forth the policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Chapter 5, paragraph 5-9 prescribed the procedures for the discharge of personnel who did not meet procurement medical fitness standards.
 - a. Individuals who were not medically qualified under procurement medical fitness standards when accepted for induction or initial enlistment would be discharged when a medical board, regardless of the date completed, established that a medical condition was identified by appropriate military medical authority within 4 months of the member's initial entrance on active duty or active duty for training under the Reserve Enlistment Program which:

(1) Would have permanently disqualified him/her for entry into the military service had it been detected at that time; and

(2) Did not disqualify him/her for retention in the military service under the provisions of chapter 3, Army Regulation 40-501 (Medical Services – Standards of Medical Fitness).

b. As an exception, an individual who was found to meet the requirements of a above, but who elected to complete the period of service for which inducted or enlisted, would not be discharged under this paragraph. Such members would be required to sign a statement electing to complete his/her period of service, notwithstanding his/her eligibility for discharge under this paragraph.

c. Commanders specified in paragraph 2-17a were authorized to order discharge under this paragraph. Separation would be accomplished within 72 hours following approval by the discharge authority. Authority for discharge (paragraph 5-9, AR 635-200) and Separation Program Number (SPN) 375 would be included in directives or orders directing the individual to report to the appropriate transfer activity.

d. Members who did not meet the medical fitness standards for retention would be processed under the provisions of AR 635-40, Physical Evaluation for Retention, Retirements, or Separation.

e. This paragraph was not to be used as a substitute for unsuitability separations in cases of character or behavior disorders, which would continue to be processed under the provisions of chapter 13.

4. Title 38, U.S. Code section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which

said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

6. Title 10, U.S. Code, section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

7. AR 15-185, Boards, Commissions, and Committees-ABCMR, provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its

discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//